

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOHN FRANCIULLO, III,) Case No. 3:15-cv-02294-WQH-NLS
Plaintiff,)
v.) **ORDER DIRECTING THE
PARTIES TO PROVIDE
SUPPLEMENTAL BRIEFING RE:
JOINT MOTION TO REMAND**
CAROLYN W. COLVIN,)
Acting Commissioner of) (Dkt. No. 15)
Social Security,)
Defendant.)
-----)

Before the Court is Plaintiff John Franciullo, III's and Defendant Carolyn Colvin's (collectively, the "Parties") Joint Motion for Voluntary Remand Pursuant to Sentence Four of 42 U.S.C. section 405(g). (Dkt. No. 15.) They seek to remand the action to offer Plaintiff a new hearing and decision.

Sentence four provides that "[t]he court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." 42 U.S.C. § 405(g).

1 It is not clear whether the Parties' request for a voluntary remand of the case
2 is proper under sentence four because the Parties do not appear to request the Court
3 to enter judgment. *See id.*; *see also* 2 Soc. Sec. Disab. Claims Prac. & Proc. §
4 19:67 (2nd ed.) (explaining that sentence four remand "involves a substantive
5 ruling by the court as to the correctness of the Commissioner's decision," and a
6 "judgment is immediately entered upon remand in a sentence four remand"). It is
7 also not clear whether the Parties intend for the currently pending motion for
8 summary judgment to remain pending on the docket or denied as moot while the
9 matter is remanded for further hearing and decision (*see* Dkt. No. 12); whether the
10 Parties request this case to remain open or be dismissed upon remand; and whether
11 they perhaps intended to move based on some other ground, such as under
12 sentence six of section 405(g) or a voluntary dismissal under Federal Rule of Civil
13 Procedure 41. In short, the Parties must provide an adequate explanation and
14 support for their request.

15 Accordingly, **IT IS ORDERED** that by August 3, 2016, the Parties must
16 provide supplemental briefing in support of their Joint Motion to Remand. The
17 Parties must address the deficiencies noted above, as well as provide citations to
18 authorities that demonstrate support for their request.

IT IS SO ORDERED.

20 | Dated: July 20, 2016

Rita L. Stormes
Hon. Nita L. Stormes
United States Magistrate Judge